United States Bistrict Court

Western DISTRICT OF OKLAHOMA

United	States v. BARRY DEAN B	FORMA	CATION TO PROCEED PAUPERIS, SUPPORTI IENTATION AND ORD	NG
			R: CR-07-154-D	., • •
		MAY 2 7 2009		<u> </u>
 	BARRY DEAN BISCHOE	RT D. DENNIS, CLERK declare th	iat I am the (check appropriate i.C. 2255 motion) EAL PAULE, DRO TUNCIV	box)
	petitioner/plaintiff	- movant-(filing 2) U:	i.C. 2255 motion)	
_	- respondent/defendant	NOTICE TO APP	CAL "NULL DROTUNC"	
	in the above-entitled proceeding; that required to prepay fees, cost or give sam unable to pay the costs of said preentitled to relief. The nature of my actito present on appeal are briefly stated	ecurity therefor, I state that occeeding or give security the on, defense, or other proces	because of my poverty, I erefor; that I believe I am	
	Entitled to a Direct	Appeal & NOTICE	pursuant to	
	F.R. crim. P. 32 (0)(2	••	.,	
 	in further support of this application	, I answer the following qu	estions.	
ł	1. Are you presently employed?		Yes ☐ No Ø	٠
	a. If the answer is "yes," state give the name and address			
		• • • • •	a. · · · · · · · · · · · · · · · · · · ·	er te
	b. If the answer is "no," state salary and wages per monti	which you received.		
	Been in Prison pa	st 16 years, don't	- recall	
	Have you received within the print ing sources?	past twelve months any mo		
	a. Business, profession or other	er form of self-employment	•	
	b. Rent payments, interest or o	· .	Yes 🔲 No 🗹	
{	c. Pensions, annuities or life i	nsurance payments?	Yes No	
	d. Gifts or inheritances?	grade Salas C	Yes No	** *
	e. Any other sources?		Yes ☐ No [7]	

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, BARRY DEAN BISCHOF	, am the petitioner in the above-entitled case.	In support of
my motion to proceed in forma paup	peris, I state that because of my poverty I am	unable to pay
the costs of this case or to give secur	rity therefor; and I believe I am entitled to red	lress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly am the past 12 months	ount during	Amount exp next month	
	You	Spouse	You	Spouse
Employment	\$	\$	<u> </u>	\$
Self-employment	\$	\$	\$ <u> </u>	\$
Income from real prope (such as rental income		\$	\$ <u> </u>	. \$
Interest and dividends	\$_ 	\$	\$ <u>&</u>	\$
Gifts	\$	\$	`\$ <u>&</u>	\$
Alimony	\$ <u>&</u>	\$	\$ <u>&</u>	\$
Child Support	\$ <u> </u>	\$	\$ <u>.</u>	\$
Retirement (such as soc security, pensions, annuities, insurance)	ial \$ <u>&</u>	\$	\$	\$ <u> </u>
Disability (such as socia security, insurance payr		\$	\$&	\$
Unemployment payment	s \$ <u> </u>	\$	\$_ -	\$
Public-assistance (such as welfare)	\$ <u> </u>	\$	\$ <u> </u>	\$
Other (specify):	\$_ -O	\$	\$ <i>&</i>	\$
Total monthly inc	ome: \$ 0	\$	\$ <i>&</i>	\$

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u> </u>	, \$
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$
Insurance (not deducted from wages or included in mor	tgage payments)	
Homeowner's or renter's	\$_0	\$
Life	\$ O	\$
Health	\$ O	\$
Motor Vehicle	\$ <u> </u>	\$_ <u>_</u>
Other:	\$&	\$
Taxes (not deducted from wages or included in mortgag	e payments)	
(specify):	\$ <u> </u>	\$
Installment payments	,	
Motor Vehicle	\$ <u> </u>	\$
Credit card(s)	\$ <u> </u>	\$
Department store(s)	\$ <u> </u>	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$ <u></u>	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u> </u>	\$
Other (specify):	\$ <u> </u>	\$
Total monthly expenses:	\$ <u> </u>	\$

•

	Address	Dates of Employment	Gross monthly pay
N/A		• •	\$
			\$ \$
	s employment histor ay is before taxes or		, most recent employer firs
Employer	Address	Dates of	Gross monthly pay
		Employment	\$
			\$
			\$
inancial institution	Type of account	\$	Amount your spouse has \$
		\$\$	\$ \$
. List the assets, an and ordinary house		h you own or your spouse	owns. Do not list clothing
		h you own or your spouse Other real estate	•
and ordinary house	ehold furnishings.		
and ordinary house] Home	ehold furnishings.	☐ Other real estate	2
and ordinary house Home Value Motor Vehicle #1	ehold furnishings.	☐ Other real estate . Value ☐ Motor Vehicle #2	e e edel

State every person, business amount owed.	, or organization o	owing you	or your s	pouse money,	and the
Person owing you or your spouse money	Amount owed to yo	Amount owed to your spouse			
\$	\$			\$	
<u> </u>	<u> </u>		\$		
	\$			\$	
7. State the persons who rely on	you or your spouse	for suppor	t.		
Name	Relationship			Age	
<u> </u>					
8. Estimate the average monthly paid by your spouse. Adjust annually to show the monthly r	any payments that	your famil are made	y. Shows weekly, b	separately the a niweekly, quart Your spous	erly, or
		rou		tour spous	
Rent or home-mortgage payment (include lot rented for mobile hom Are real estate taxes included? Is property insurance included?	☐ Yes ☐ No	\$ <u></u> €	}	\$	
Utilities (electricity, heating fuel, water, sewer, and telephone)		\$ <u>£</u>	}	\$	
Home maintenance (repairs and up	keep)	\$ <u> </u>		\$	
Food .	•	\$	<u>O</u>	\$	
Clothing		\$	<u> </u>	\$	
Laundry and dry-cleaning		\$ C	>	\$	
Medical and dental expenses		s C	-	\$	

	•			, 20_			
	•			. 20			
I declare	•						
	under per	nalty of p	erjury that t	he foregoing	; is true and	correct.	
			16 years	m norp expr	ani wag goz	ounter pay	
12. Provi	de anv otí	her infor	mation that w	vill help expl	ain why vou	cannot pay t	he costs of this ca
If yes, st	ate the pe	erson's na	ame, address,	and telepho	ne number:		
If yes	i, how mu	ich?				•	
	Yes						
form'		_/					
a typ	ist) any n	—or will noney for	you be paying services in c	ig—anyone o	other than ar	attorney (s , including t	uch as a paralega he completion of t
If ye	s, state ti	he attorn	ey's name, ad	ldress, and t	elephone nui	mber:	
with	this case	, includin	ig the comple	tion of this	form? 🗀 Y	es 🗹 No	
10. Have	e you paid	d – or wil	ll you be payi	ing – an atto	orney any mo	oney for serv	vices in connection
			ri y odj dode.	The on all a	oononed unce	•	
	J 769 F	∡f N∩	If wee deem	riha an an a'	ttached sheet	L	
	Yes 🛚	_/					

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UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

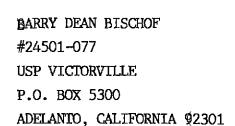
PRO SE DOCKETING STATEMENT

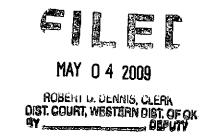
INSTRUCTIONS: Appellant must complete the entire docketing statement form and attach copies of the following documents: (1) the notice of appeal; (2) the order or judgment being appealed; and (3) any written findings, conclusions or order of the trial court relating to the order of judgment being appealed. The completed docketing statement, together with the attachments, must be filed with the clerk of the court of appeals within 10 days after filing the notice of appeal. A copy of the completed docketing statement, with attachments, must be served on all opposing parties or their counsel. Proof of service must be provided. You must complete the certificate of service which is part of this form.

l.	Your name, address, including registration number if applicable:	_
BAI	PRY DEAN BISCHOF 24501-077 FCCVICTORVILLE-USP	
P. C	BOX 5300, Adelanto, CA. 92301	
2.	Title and number of district court case: UNITED STATES U. BARRY	_
DE	AN BISCHOF CR-07-154-D	
3. _	Name of the district court: Western District of OKlahoma	*
4.	The dates on which the district court order and your notice of appeal were filed:	
5.	Type of action: habeas corpus	
	§ 2255 motion	
	motion to reduce sentence	
	civil action for damages	
٠.	other [specify] NUNC PROTUNC MOTION for direct appear	1

	ATIVIA A	لمد	b. Consorer	to Direct Appeal, 18 USC 3742 (2)(1)	12
DUDC PRO	TIME, G	MINEO	by Congress	18 030 3142 (611)	<u>(4)</u>
	<u> </u>		·		
		•			·
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	•		<u> </u>	. 	<u> </u>
			ight to direct	of the district court should	be
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3. Did you	have a hearin	g in the di	strict court? <u>N</u> C	7:	<u>-</u>
3. Did you	have a hearin	g in the di	strict court? <i>\\\c</i>	7	<u>-</u>
3. Did you	have a hearin	g in the di	strict court? <i>\\]</i> _	7	<u>-</u>
3. Did you	have a hearin	g in the di	strict court? <i>\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\</i>	7:	-

I, BARRY DEAN BISCHOF [appellant/petitioner]	hereby certify that on
	Pro Se Docketing Statement,
Robert D Dennis Clerk of Court , at 200	N.W. 4th street, RM1210
[appellee/respondent or attorney therefor]	
BKlahoma City, Oklahoma 73102	
	, the last known address,
by way of United States mail or courier.	
Signature 5/13/09	
Dated signed	
BARRY DEANBISCHOF 24501-077	
FCC VICTORVILLE-USP	
P.O. Box 5300	• • • • • • • • • • • • • • • • • • •
Adelanto, CA 92301 [Printed name and address of person completing services	1





UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

BARRY DEAN BISCHOF

Defendant.

٧s.

UNITED STATES OF AMERICA,

Plaintiff,

Case No. CR-07-154-D
"NOTICE OF APPEAL"
"Numc Pro Tunc"
Via 18 USC § 3742 (a)(1)(2)

Now Comes; defendant Bischof land does hereby gives this "NOTICE TO APPEAL Nunc Pro Tunc" a statutory right under Title 18 United States Code Section 3742(a)(1)(2) an illegal sentence or one imposed in violation of the sentencing guidlines etc.

"Stare Decisis"

Cite: Roe v. Flores-Ortega, 528 U.S. 470 (2000)

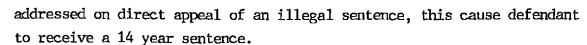
Peguero v. United States Supra, 526 U.S. at 29-30

"CAUSE AND PRJUDICE"

1) The sentencing Judge DeGiusti failed to follow the dicta limned in Federal Rules of Criminal Procedure 32(a)(2) now (c)(5), to protect defendant Bischof's statutory right to appeal an illegal sentence under 18 USC §3742(a) (1)(2).

Congress made 18 USC §3742 (a)(1)(2) the "Exclusive Avenue" in which an deferment may adjudicate any and all sentencing guidline claims, if these claims are not addressed on appeal they are waived, forfeited from adjudication under 28 USC §2255.

2) Ineffective Counsel failed to properly file a timely "Notice To Appeal A Sentence" and did not consult with defendant Bischof on any claims to be



Wherefore; counsel was ineffective under Cite: Paul Glover v. United States, 162 L.Fd2d 480 (2001).

"CLAIMS"

1) Defendant Bischof is entitled to effective assistance of counsel on his first appeal of a criminal conviction and its sentence. The right to effective counsel is denied where the Attorney failed to follow defendant's request and instructions.

The Supreme Court has applied the general rule where, as here, the appellate/defense lawyer failed to follow the directions to appeal by a defendant. In [Roe v. Flores-Ortega, 528 U.S. 470 (2000) and [Peguero v. United States supra, 526 U.S. at 29-30, the court held that counsel has a duty to consult with the defendant about whether to appeal, when there is a reason to think that a reasonable defendant with a court imposed 14 years sentence would want to appeal, or when the particular defendant has demonstrated his desire to press forward with any available appeal in his case if possible.

Where such circumstances are present, and those circumstances cause the defendant to lose the valuable right to appeal, [Roe v. Flores-Ortega] holds that counsel is ineffective and the client is prejudiced, No further proof of meritorious issues that might have been raised on appeal is necessary, to prove such a claim.

2) Defendant Bischof is entitled to the benefit of the holding of [Roe v. Flores-Ortega: The federal Court's are unanimous in holding that it is not a new rule, but an application of "Strickland v. Wahington, 466 U.S. 668(1984). This 10th Circuit has followed other circuits that have allowed the filing of an "out of time appeal".

"IN CONCLUSION"

For all the foregoing reasons, and the fact that defendant Bischof has been moved around from place to place without his legal work or property with to even find out what the attorney had done (even the court was unable to contact him as shown in Docket sheet) (see exhibit 1), this "Notice To Appeal Nunc Pro Tunc" should be granted in the interest of justice, and to follow The United States Supreme Court's dicta's as presented.

Will this court hereby grant this request to protect defendant's statutory right to appeal given to all defendants by Congress?

Signed, dated and mailed April 27, 2009

Respectfully Submitted;

ř.

Barry Dean Bischot

		58 Notice (Other) filed by Russell Dean Landers, 113 Notice (Other) filed by Barry Dean Bischof, 140 Notice (Other) filed by Russell Dean Landers, 179 Notice (Other) filed by Russell Dean Landers, 129 Notice (Other) filed by Russell Dean Landers, 127 Notice (Other) filed by Russell Dean Landers, 73 Notice (Other) filed by Russell Dean Landers, 148 Notice (Other) filed by Russell Dean Landers, 145 Notice (Other) filed by Russell Dean Landers, 26 Affidavit filed by Barry Dean Bischof, 85 Notice (Other) filed by Clayton Heath Albers, 142 Notice (Other) filed by Russell Dean Landers, 112 Notice (Other) filed by Barry Dean Bischof, 155 Notice (Other) filed by Russell Dean Landers, 86 Notice (Other) filed by Clayton Heath Albers, 159 Notice (Other) filed by Clayton Heath Albers, 128 Notice (Other) filed by Russell Dean Landers, 138 Notice (Other) filed by Barry Dean Bischof, 171 Notice (Other) filed by Russell Dean Landers. Defendants are directed to cease filing frivolous documents into the record of this case. Order More Fully Setout. Signed by Honorable Timothy D. DeGiusti on 4/2/2008. (mb.,) (Entgred: 04/02/2008)
04/16/2008	210	RETURN OF SERVICE - NON SUMMONS Request of US Atty for Prod of Fed Prisoner Barry Dean Bischof by United States of America; returned to FTC 4/15/08 (ap,) (Entered: 04/16/2008)
04/28/2008		Attorney update in case as to Barry Dean Bischof. Attorney Larry W Tedder terminated. (mb,) (Entered: 04/28/2008)
04/28/2008		(Court only) *** Staff notes: Larry Tedder terminated due to not having a valid e-mail address for notices. (mb,) (Entered: 04/28/2008)
05/13/2008	229	USCA Case Number as to Russell Dean Landers, Clayton Heath Albers, Carl Ervin Batts, Barry Dean Bischof, William Michael Roberson 08-6105 for 209 Notice of Appeal filed by Russell Dean Landers. (cjs,) (Entered: 05/13/2008)
09/10/2008	<u>251</u>	NOTICE OF APPEAL by Barry Dean Bischof (cjs,) (Entered: 09/10/2008)
09/10/2008	<u>252</u>	Transmission of Notice of Appeal as to Barry Dean Bischof to US Court of Appeals re 251 Notice of Appeal (cjs,) (Entered: 09/10/2008)

Exhibit 1

